

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**Chris Langer,**

Plaintiff,

v.

**Jane Ekstrom**, in her individual and  
representative capacity as trustee of  
the Ekstrom Marital Trust (04-24-  
91) and Ekstrom Residuary Trust 04;  
**Robert Ekstrom**, in his individual  
and representative capacity as trustee  
of the Ekstrom Marital Trust (04-24-  
91) and Ekstrom Residuary Trust 04;  
**Horizon Distributors, Inc.**, a  
Delaware Corporation; and Does 1-  
10,

Defendants.

**Case No. '14CV2440 WQHNLS**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act;  
California Disabled Persons Act;  
Negligence**

Plaintiff Chris Langer complains of Defendants Jane Ekstrom, in her individual and representative capacity as trustee of the Ekstrom Marital Trust (04-24-91) and Ekstrom Residuary Trust 04; Robert Ekstrom, in his individual and representative capacity as trustee of the Ekstrom Marital Trust (04-24-91) and Ekstrom Residuary Trust 04; Horizon Distributors,

1 Inc., a Delaware Corporation; and Does 1-10 (“Defendants”) and alleges as  
2 follows:

3  
4 **PARTIES:**

5 1. Plaintiff is a California resident with physical disabilities. He is a  
6 paraplegic who cannot walk and who uses a wheelchair for mobility. He has  
7 a specially equipped van with a ramp that deploys out of the passenger side  
8 of his van and he has a Disabled Person Parking Placard issued to him by the  
9 State of California.

10 2. Defendants are, or were at the time of the incidents, the real property  
11 owners, business operators, lessors and/or lessees for the Horizon  
12 Distributors (“Horizon”) located at or about 7366 Engineer Rd., San Diego,  
13 California.

14 3. Plaintiff does not know the true names of Defendants, their business  
15 capacities, their ownership connection to the property and business, or their  
16 relative responsibilities in causing the access violations herein complained  
17 of, and alleges a joint venture and common enterprise by all such  
18 Defendants. Plaintiff is informed and believes that each of the Defendants  
19 herein, including Does 1 through 10, inclusive, is responsible in some  
20 capacity for the events herein alleged, or is a necessary party for obtaining  
21 appropriate relief. Plaintiff will seek leave to amend when the true names,  
22 capacities, connections, and responsibilities of the Defendants and Does 1  
23 through 10, inclusive, are ascertained.

24  
25 **JURISDICTION & VENUE:**

26 4. This Court has subject matter jurisdiction over this action pursuant to  
27 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
28 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

1       5. Pursuant to pendant jurisdiction, an attendant and related cause of  
2 action, arising from the same nucleus of operative facts and arising out of  
3 the same transactions, is also brought under California's Unruh Civil Rights  
4 Act, and the California Disabled Persons Act, which acts expressly  
5 incorporate the Americans with Disabilities Act.

6       6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
7 founded on the fact that the real property which is the subject of this action  
8 is located in this district and that Plaintiff's cause of action arose in this  
9 district.

10  
11       **FACTUAL ALLEGATIONS:**

12       7. The Plaintiff went to the Horizon in March of 2014 to get a mower  
13 repaired.

14       8. Horizon is a facility open to the public, a place of public  
15 accommodation, and a business establishment.

16       9. Parking spaces are one of the facilities, privileges and advantages  
17 offered by defendants to their customers at the Horizon.

18       10. Although parking spaces are one of the facilities available to patrons  
19 of the business, there is not a single handicap parking space.

20       11. Plaintiff alleges that a fully compliant handicap-accessible parking  
21 space once existed at this location but it has been allowed to fade away to  
22 the point that it is no longer available for use by disabled persons. In fact,  
23 plaintiff believes that a handicap-accessible parking space once existed at  
24 this location because there is signage at the front entrance of the parking lot  
25 that suggests that customers should not park in spaces reserved for disabled  
26 persons unless the customer has a handicap placard.

27       12. Defendants have no policy or procedure in place to make sure that the  
28 accessible parking space remains useable in the parking lot. As such, the

1 parking space reserved for disabled persons is no longer available for  
2 disabled customers.

3 13. The plaintiff personally encountered this problem. This inaccessible  
4 condition denied the plaintiff full and equal access and caused him difficulty  
5 and frustration.

6 14. Plaintiff would like to return and patronize Horizon but will be  
7 deterred from visiting until the defendants cure the violation. Plaintiff lives  
8 in San Diego County and visits this area of San Diego often. On the day of  
9 plaintiff's visit, plaintiff ended up going to Mario's Mower Repair instead.

10 15. The defendants have failed to maintain in working and useable  
11 condition those features required to provide ready access to persons with  
12 disabilities.

13 16. Given the obvious and blatant violations, the plaintiff alleges, on  
14 information and belief, that there are other violations and barriers on the site  
15 that relate to his disability. Plaintiff will amend the complaint, to provide  
16 proper notice regarding the scope of this lawsuit, once he conducts a site  
17 inspection. However, please be on notice that the plaintiff seeks to have all  
18 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191  
19 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,  
20 he can sue to have all barriers that relate to his disability removed regardless  
21 of whether he personally encountered them).

22 17. Additionally, on information and belief, the plaintiff alleges that the  
23 failure to remove these barriers was intentional because: (1) these particular  
24 barriers are intuitive and obvious; (2) the defendants exercised control and  
25 dominion over the conditions at this location and, therefore, the lack of  
26 accessible facilities was not an "accident" because had the defendants  
27 intended any other configuration, they had the means and ability to make the  
28 change.

**I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all defendants (42 U.S.C. section 12101, et seq.)

18. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

19. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix “D.”
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by

1 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

2 20. Any business that provides parking spaces must provide handicap  
3 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in  
4 every eight of those handicap parking spaces but not less than one must be a  
5 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991  
6 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six  
7 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

8 21. Here, the lack of a handicap-accessible parking space is a violation of  
9 the law.

10 22. The defendants have no policy or procedure to make sure that its  
11 handicap-accessible parking spaces remain useable by disabled persons.

12 23. A public accommodation must maintain in operable working  
13 condition those features of its facilities and equipment that are required to be  
14 readily accessible to and usable by persons with disabilities. 28 C.F.R. §  
15 36.211(a).

16 24. Here, the failure to ensure that the accessible parking was available  
17 and ready to be used by the plaintiff is a violation of the law.

18  
19 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH**  
20 **CIVIL RIGHTS ACT** (On behalf of plaintiffs and against all defendants)  
21 (Cal Civ § 51-53)

22 25. Plaintiff repleads and incorporates by reference, as if fully set forth  
23 again herein, the allegations contained in all prior paragraphs of this  
24 complaint.

25 26. Because the defendants violated the plaintiffs’ rights under the ADA,  
26 they also violated the Unruh Civil Rights Act and are liable for damages.  
27 (Civ. Code § 51(f), 52(a).)

28 27. Because the violation of the Unruh Civil Rights Act resulted in

1 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
2 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
3 55.56(a)-(c).)

4  
5 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**  
6 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and  
7 against all defendants) (Cal Civ. § 54-54.8)

8 28. Plaintiff repleads and incorporates by reference, as if fully set forth  
9 again herein, the allegations contained in all prior paragraphs of this  
10 complaint.

11 29. Because the defendants violated the plaintiff's rights under the ADA,  
12 they also violated the Disabled Persons Act and are liable for damages. (Civ.  
13 Code § 54.1(d), 54.3(a).)

14 30. Because the violation of the Disabled Persons Act resulted in  
15 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
16 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
17 55.56(a)-(c).)

18  
19 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of  
20 plaintiff and against all defendants)

21 31. Plaintiff repleads and incorporates by reference, as if fully set forth  
22 again herein, the allegations contained in all prior paragraphs of this  
23 complaint.

24 32. The Defendants had a general duty and a duty arising under the  
25 Americans with Disabilities Act and the Unruh Civil Rights Act and  
26 California Disabled Persons Act to provide safe, convenient, and accessible  
27 facilities to the plaintiffs. Their breach of this duty, as alleged in the  
28 preceding paragraphs, has caused injury and damage as alleged above.

1           **PRAYER:**

2           Wherefore, Plaintiff prays that this court award damages and provide  
3 relief as follows:

4           1. For injunctive relief, compelling defendants to comply with the  
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
6 Plaintiffs are not invoking section 55 of the California Civil Code and is not  
7 seeking injunctive relief under the Disabled Persons Act at all.

8           2. Damages under the Unruh Civil Rights Act and/or the California  
9 Disabled Persons Act which damages provide for actual damages and a  
10 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both  
11 acts, simultaneously, and an election will be made prior to or at trial.

12           3. Reasonable attorney fees, litigation expenses and costs of suit,  
13 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

14           Dated: August 25, 2014

CENTER FOR DISABILITY ACCESS

15  
16           By: 

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18           \_\_\_\_\_  
Mark Potter, Esq.  
Attorneys for Plaintiff